

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

CIVIL NO. 12-257 (JB-LFG)

LARRY A. GOLDSTONE,

CLARENCE G. SIMMONS, III, and

JANE E. STARRETT,

Defendants.

PLAINTIFF'S WITHDRAWAL OF RELIANCE ON CITED AUTHORITY

Plaintiff hereby withdraws its reliance on *In re General Elec. Co. Sec. Litig.*, 2012 WL 90191 (S.D.N.Y. Jan. 11, 2012), cited on page 8 of its Supplemental Brief on Motions to Dismiss. Dkt. 68. The district court in *In re General Elec. Sec. Litig.*, recently issued an opinion granting defendant's motion for reconsideration. 2012 WL 1371016 (S.D.N.Y. April 18, 2012). Among other things, the later opinion found that GE chief executive officer's, Jeffrey Immelt's, statement that GE successfully met its commercial paper needs was a statement of opinion, and was inactionable because the statement was true and plaintiff had not alleged that Immelt believed otherwise. *Id.* at *9. Further, the court found that plaintiff's explicit disclaimer of Immelt's knowing misconduct precluded an allegation of subjective falsity. *Id.* While the January 11, 2012 opinion is no longer reliable for the purpose of finding Immelt's statement to have been materially misleading, that should not change the result here. Here Plaintiff alleges

facts, known to Defendants, that Thornburg had *not* “successfully” met all its margin calls. As noted in other cases cited in Plaintiff’s Supplemental Brief, statements that are objectively verifiable as false may be both materially misleading and actionable.

DATED this 11th day of September, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2012, the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

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